

subpart, discussions between the Department and the parties result in settlement of a complaint, the Department shall prepare an agreement to be signed by the parties and an authorized official of the Department. A settlement shall not affect the operation of any other enforcement efforts of the Department, including compliance reviews or investigation of other complaints involving the recipient.

(2) If the Department determines that an investigation pursuant to paragraph (f) of this section indicates probable noncompliance with this subpart, the Department shall inform the recipient and shall promptly begin enforcement pursuant to § 42.733.

(3) If the Department determines that an investigation does not indicate probable noncompliance, the Department shall inform the recipient and the complainant. The Department shall also inform the complainant of his or her right to bring a civil action as described in § 42.736.

**§ 42.732 Prohibition against intimidation.**

A recipient may not intimidate or retaliate against any person who attempts to assert a right secured by the Act and this subpart or who cooperates in any mediation, investigation, hearing, or other aspect of the Department's compliance procedure.

**§ 42.733 Enforcement procedures.**

(a) *Voluntary compliance.* When a compliance review or complaint investigation results in a finding of probable noncompliance with this subpart, the Department shall attempt to obtain voluntary compliance. An agreement for voluntary compliance shall describe the corrective action to be taken and time limits for such action and shall be signed by the recipient and an authorized official of the Department.

(b) *Means of enforcement*—(1) *General.* (i) The Department may seek to enforce this subpart—

(A) By administrative proceedings that may lead to termination or refusal of federal financial assistance to the particular program or activity; or

(B) By any other means authorized by law. Such other means include law-

suits by the Department of enjoin violations of this subpart.

(ii) To the extent consistent with the Act, the Department, in enforcing this subpart, shall follow the procedures applicable to enforcement of title VI of the Civil Rights Act of 1964.

(2) *Termination of federal financial assistance.* With regard to enforcement of this subpart through the termination or refusal of federal financial assistance, the Department shall follow the provisions of its title VI regulation concerning notice (28 CFR 42.180(c)), hearings (28 CFR 42.109), and decisions (28 CFR 42.110). However, with respect to programs or activities receiving federal financial assistance from a component of the Department's Office of Justice Programs (OJP), the requirement of 28 CFR 42.110(e) that a sanction be approved by the Attorney General shall not apply; that function may be performed by the Assistant Attorney General, OJP.

(3) *Other means of enforcement.* With regard to enforcement of this subpart through other means, the Department shall follow the procedures of 28 CFR 42.108(d). In addition, at least 30 days before commencing a lawsuit or taking other action pursuant to paragraph (b)(1)(i)(A) of this section, the Department shall send an appropriate report to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved.

(c) *Deferral.* When a proceeding for the termination or refusal of federal financial assistance is initiated pursuant to paragraph (b)(1)(i)(A) of this section, the Department may defer granting new federal financial assistance to the recipient.

(1) New federal financial assistance includes any assistance for which, during the deferral period, the Department requires an application or approval, including renewal or continuation of existing activities or authorization of new activities. New federal financial assistance does not include assistance approved prior to initiation of the administrative proceeding or increases in funding as a result of a change in the manner of computing formula awards.

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(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing. A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Department. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

### § 42.734 Alternative funding.

When assistance to a recipient is terminated or refused pursuant to § 42.733(b)(1)(i)(A), the Department may disburse the withheld funds directly to an alternate recipient serving the same area (i.e., a public or nonprofit private organization or agency or state or political subdivision of the state). Any such alternate recipient must demonstrate the ability to comply with the requirements of this subpart and to achieve the goals of the federal statute authorizing the assistance.

### § 42.735 Judicial review.

A final decision of the Department in an administrative proceeding pursuant to § 42.733(b)(1)(i)(A) is subject to judicial review as provided in section 306 of the Act, 42 U.S.C. 6105.

### § 42.736 Private lawsuits.

(a) Upon exhausting administrative remedies under the Act, a complainant may file a civil action to enjoin a violation of the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and the Department has made no finding with regard to the complaint; or

(2) The Department issues a finding, pursuant to § 42.731(g)(3), in favor of the recipient.

(b) Whenever administrative remedies are exhausted in accord with paragraph (a) of this section, the Department shall promptly inform the complainant that

(1) The complainant may bring a civil action in a United States district court for the district in which the recipient is located or transacts business;

(2) A complainant who prevails in such an action has the right to be

awarded reasonable attorney's fees, if the complainant demands such an award in the complaint initiating the lawsuit;

(3) Before commencing the action, the complainant must give 30 days' notice by registered mail to the Secretary, the Attorney General, and the recipient;

(4) The notice must state the nature of the alleged violation, the relief requested, the court in which the action will be brought, and whether attorney's fees will be demanded; and

(5) The complainant may not bring an action if the same alleged violation by the recipient is the subject of a pending action in any court of the United States.

### §§ 42.737–42.799 [Reserved]

#### APPENDIX A TO SUBPART I OF PART 42— FEDERAL FINANCIAL ASSISTANCE ADMINISTERED BY THE DEPARTMENT OF JUSTICE TO WHICH THIS SUBPART APPLIES

NOTE: Failure to list a type of federal assistance in appendix A shall not mean, if the Age Discrimination Act is otherwise applicable, that a program or activity is not covered. For the text of appendix A to subpart I, see appendix A to subpart C of this part.

#### APPENDIX B TO SUBPART I OF PART 42— AGE DISTINCTIONS IN FEDERAL STATUTES OR REGULATIONS AFFECT- ING FINANCIAL ASSISTANCE ADMINIS- TERED BY THE DEPARTMENT OF JUSTICE

Section 90.31(f) of HHS' the general regulations (45 CFR part 90) requires each federal agency to publish an appendix to its final regulation containing a list of age distinctions in federal statutes and regulations affecting financial assistance administered by the agency. This appendix is the Department's list of federal statutes and Department regulations that contain age distinctions that:

(1) Provide benefits or assistance to persons based upon age; or

(2) Establish criteria for participation in age-related terms; or

(3) Describe intended beneficiaries or target groups in age-related terms.

The Department administers financial assistance under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5601–5672). This statute reflects the basic distinction between criminal justice systems for adults and juvenile justice